IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7299 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NURBHAI VALIBHAI PULAWALA

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7299 of 2002

MS BANNA S DUTTA for Petitioner No. 1

MR ANIL S DAVE for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 24.6.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of two criminal cases, being CR No.328 of 2001 and CR No.233 of 2002 registered at Panigate Police Station. In connection with the aforesaid cases, some bricks and stones were found from the petitioner as well as some stick, pipe and sword were also found from the petitioner. The petitioner was released by the competent Court in connection with both the aforesaid cases. However, the detaining authority has relied upon the statements of two witnesses, which are dated 25.4.2002 and 26.5.2002. The witnesses have stated that the petitioner is a communal minded person and he is trying to assault people of other community.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, the last case registered against the petitioner is on 30.4.2002, while the detention order is passed as late as on 24.6.2002. For that purpose, learned advocate has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and others, reported in 1997 (1) GLH 381 wherein the Court in para 21 observed as under.:

> "In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been

> referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Praksh v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993 (2) Suppli, SCC 61."

#. Mr.Patel, learned AGP, however, submitted that the statements of witnesses were recorded on later point of time, and that the last statement was recorded on 1.6.2002. However, it is required to be noted that, if really the activities of the petitioner-detenu are required to be prevented, there is no reason to wait for such a long time, i.e. upto 24.6.2002, as, by such delay, the entire object of preventive detention would be frustrated. However, it is required to be noted that, it is always open for the detaining authority to detain a person without waiting for the statements of the witnesses, if the authority is of the opinion that a person is a "dangerous person". Even after recording of the statements of the witnesses, the detention order is not passed immediately and the same is passed as late as on 24.6.2002. In such cases, a person is required to be detained forthwith, so that, such illegal activities may not be allowed to go on even for a moment. In that view of the matter and in view of the judgment referred to above, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 24.6.2002 is quashed and set aside. The detenu Nurbhai Valibhai Pulawala is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)